TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 30.

JAMES L. HOLT, TAX ASSESSOR AND COLLECTOR OF THE FIRST TAXATION DIVISION OF THE TERRITORY OF HAWAII, PLAINTIFF IN ERROR,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

FILED FEBRUARY 25, 1907.

(20,590.)

(20,590.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 244.

JAMES L. HOLT, TAX ASSESSOR AND COLLECTOR OF THE FIRST TAXATION DIVISION OF THE TERRITORY OF HAWAII, PLAINTIFF IN ERROR,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

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1 In the Supreme Court of the United States, October Term, 1905.

JAMES L. HOLT, Tax Assessor and Collector, First Taxation Division, Territory of Hawaii, Plaintiff and Plaintiff in Error,

vs.

A. TULLETT, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Garnishee and Defendant in Error.

Petition for Writ of Error from the Supreme Court of the United States.

Now comes James L. Holt, Tax Assessor and Collector of the First Taxation Division of the Territory of Hawaii, plaintiff herein and says:

That on the 19th day of May, A. D. 1906, the Supreme Court of the Territory of Hawaii entered a judgment in the above entitled cause in favor of the garnishee and against this plaintiff, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition;

Wherefore this plaintiff prays that a writ of error may issue
2 in this behalf out of the Supreme Court of the United States for the correction of errors so complained of and that the transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

E. C. PETERS,
Attorney General of Hawaii.
M. F. PROSSER,
Deputy Attorney General of Hawaii,
Attorneys for Plaintiff.

Honolulu, May 21st, 1906.

The writ of error as prayed for in the foregoing petition is hereby allowed this 21st day of May, A. D. 1906, the writ of error to operate as a supersedeas, and the bond for that purpose is fixed at the sum of Five Hundred Dollars ($500.00).

Dated at Honolulu, this 21st day of May A. D. 1906.

W. F. FREAR.
Chief Justice of the Supreme Court of the Territory of Hawaii.

Filed in the office of the clerk of the Supreme Court of the Territory of Hawaii, this 21st day of May, A. D. 1906.

[Seal Supreme Court, Territory of Hawaii.]

HENRY SMITH,
Clerk of the Supreme Court of the Territory of Hawaii.

3 In the Supreme Court of the United States, October Term, 1905.

JAMES L. HOLT, Tax Assessor and Collector, First Taxation Division, Territory of Hawaii, Plaintiff and Plaintiff in Error,

vs.

A. TULLETT, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Garnishee and Defendant in Error.

Assignment of Errors.

Now comes James L. Holt, Tax Assessor and Collector of the First Taxation Division of the Territory of Hawaii, plaintiff in error in the above entitled cause, and respectfully submits:

That in the record, proceedings, decision and final judgment of the Supreme Court of the Territory of Hawaii in the cause entitled James L. Holt, Tax Assessor and Collector for the First Taxation Division of the Territory of Hawaii, plaintiff, *vs.* A. Tullett, defendant, Inter-Island Steam Navigation Company, Limited, garnishee, on which final judgment of said Supreme Court of

4 the Territory of Hawaii was rendered on the 19th day of May, A. D. 1906, the said James L. Holt, Tax Assessor and Collector of the First Taxation Division of the Territory of Hawaii, having obtained a writ of error upon said judgment of Supreme Court of the Territory of Hawaii returnable within thirty days after the date of said writ of error to the Supreme Court of the United States at Washington in the District of Columbia, assign- for error in the record and judgment aforesaid the following, to wit:

I.

That the said Supreme Court of the Territory of Hawaii erred in deciding upon an appeal duly taken to said Court from the order of the District Magistrate of Honolulu; that the Inter-Island Steam Navigation Company, Limited, garnishee and defendants in error, was not required by law to pay to the plaintiff in error the sum of Sixty-five Dollars ($65.00) as in said order appealed from to said Supreme Court set forth.

II.

That said Supreme Court of the Territory of Hawaii erred in giving judgment in said cause in favor of the said garnishee and defendant in error and against the plaintiff in error.

III.

That said Supreme Court of the Territory of Hawaii erred in deciding that the wages of defendant being a seaman in the

5 coasting trade of the United States were for that reason exempt from assessment or attachment in proceedings supplementary to execution.

IV.

That the Supreme Court of the Territory of Hawaii erred in deciding that the wages of *of* said defendant being a seaman were exempt by law from execution under and by virtue of Section 4536 of the Revised Statutes of the United States.

Wherefore and on account of said manifest errors and each of them, all of which errors appear on the record of said cause and in the decision and judgment of said Supreme Court of said Territory of Hawaii, said James L. Holt, Tax Assessor and Collector for the First Taxation Division of the Territory of Hawaii, prays that the judgment may be reversed and that the said Supreme Court of the Territory of Hawaii be ordered to enter an order sustaining the order of the District Magistrate of Honolulu appealed from and remanding said cause to said District Magistrate of Honolulu for such further proceedings as may properly be had in the premises.

Dated, Honolulu, May 21st, A. D. 1906.

E. C. PETERS,
Attorney General of Hawaii,
M. F. PROSSER,
Deputy Attorney General of Hawaii,
Attorneys for Plaintiff in Error.

6 In the Supreme Court of the United States, October Term, 1905.

JAMES L. HOLT, Tax Assessor and Collector, First Taxation Division, Territory of Hawaii, Plaintiff and Plaintiff in Error,

vs.

A. TULLETT, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Garnishee and Defendant in Error.

Order Allowing Writ of Error from the Supreme Court of the United States to the Supreme Court of the Territory of Hawaii.

The above entitled matter coming before me upon the petition of the plaintiff therein for a writ of error from the Supreme Court of the United States to the Supreme Court of the Territory of Hawaii, and upon examination of said petition and the record in said matter, and desiring to give the plaintiff an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter;

It is ordered that a writ of error be and the same is hereby allowed from the Supreme Court of the United States to the Supreme Court of the Territory of Hawaii in the above entitled cause, and
7 that the bond presented by the said plaintiff be and the same is hereby approved.

Dated Honolulu, T. H., May 21, 1906.

[Seal Supreme Court, Territory of Hawaii.]

W. F. FREAR,
Chief Justice of the Supreme Court
of the Territory of Hawaii.

8 In the Supreme Court of the United States, October Term, 1905.

JAMES L. HOLT, Tax Assessor and Collector, First Taxation Division, Territory of Hawaii, Plaintiff and Plaintiff in Error,

vs.

A. TULLETT, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Garnishee and Defendant in Error.

Bond.

Know all men by these presents, that I, James L. Holt, Tax Assessor and Collector of the First Taxation Division of the Territory of Hawaii, principal, and A. J. Campbell and William Henry, sureties are held and firmly bound unto the Inter-Island Steam Navigation Company, Limited, in the sum of Five Hundred Dollars ($500.00) to the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, by these presents;

The condition of this obligation is such, that

9 Whereas in a suit pending in the Supreme Court of the Territory of Hawaii, between James L. Holt, Tax Assessor and Collector of the First Taxation Division of the Territory of Hawaii, plaintiff, and A. Tullett, defendant, and the Inter-Island Steam Navigation Company, Limited, garnishee, in certain proceedings supplementary to execution judgment was rendered against the said plaintiff and in favor of the said garnishee on the 19th day of May, A. D. 1906, and said plaintiff having obtained a writ of error and filed a copy thereof in the office of the clerk of the said Supreme Court of the Territory of Hawaii to reverse the judgment in said suit, together with a citation directed to said Inter-Island Steam Navigation Company, Limited, citing and admonishing it to be and appear at the Supreme Court of the United States to be holden at Washington in said District of Columbia,

Now therefore, if the said James L. Holt, Tax Assessor and Collector of the First Taxation Division of the Territory of Hawaii, shall prosecute his said writ of error to effect and answer all costs if he shall fail to make his said plea good, then the above obligation to be void; otherwise to remain in full force and effect.

10 In witness whereof the said James L. Holt, Tax Assessor and Collector of the First Taxation Division of the Territory of Hawaii, principal, and A. J. Campbell and William Henry sureties, have hereunto set their hands and seals this twenty-first day of May, A. D. 1906.

JAMES L. HOLT, [SEAL.]
Tax Assessor, 1st Division, Territory of Hawaii.
WM. HENRY. [SEAL.]
A. J. CAMPBELL. [SEAL.]

Approved
W. F. FREAR,
Chief Justice, Supreme Court, Hawaii.

Honolulu, May 21, 1906.

[Seal Supreme Court, Territory of Hawaii.]

11 In the Supreme Court of the United States, October Term, 1905.

JAMES L. HOLT, Tax Assessor and Collector, First Taxation Division, Territory of Hawaii, Plaintiff and Plaintiff in Error,

vs.

A. TULLETT, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Garnishee and Defendant in Error.

Writ of Error to the Supreme Court of the Territory of Hawaii.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the Supreme Court of the Territory of Hawaii, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment or decree which is in the said Supreme Court of the Territory of Hawaii, before you, being the highest court of law or equity of the said the Territory of Hawaii in which a decision could be had in said suit between James L. Holt, Tax Assessor
12 and Collector of the First Taxation Division of the Territory of Hawaii, plaintiff, A. Tullett, defendant, and the Inter-Island Steam Navigation Company, Limited, garnishee, where was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States and the decision was against their validity; or where was drawn in question the validity of the statute of, or an authority exercised under said Territory of Hawaii on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision was in favor of their validity; or where any title, right, privilege or immunity is claimed under the constitution, or any treaty, or statute of, or commission held, or authority exercised, under the United States, and the decision was against the title, right and privilege, or immunity specially set up or claimed by either party under such constitution, treaty, statute, commission, or authority, a manifest error hath happened to the great damage of the said James L. Holt, Tax Assessor and Collector of the First Taxation Division of the Territory of Hawaii, as by his complaint appears, we being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do com-
13 mand you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, in the said Supreme Court, to be then and there *heard*, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court the 21st day of May, in the year of our Lord one thousand nine hundred and six.

[Seal Supreme Court, Territory of Hawaii.]

HENRY SMITH,
Clerk of the Supreme Court of the Territory of Hawaii.
E. C. PETERS,
Attorney General of Hawaii,
M. F. PROSSER,
Deputy Attorney General of Hawaii,
Attorneys for Plaintiff.

Allowed by
W. F. FREAR,
Chief Justice of the Supreme Court
of the Territory of Hawaii.

14 In the Supreme Court of the United States, October Term, 1905.

JAMES L. HOLT, Tax Assessor and Collector, First Taxation Division, Territory of Hawaii, Plaintiff and Plaintiff in Error,
vs.
A. TULLETT, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Garnishee and Defendant in Error.

Citation to Defendant in Error.

The United States of America to the Inter-Island Steam Navigation Company, Limited, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington in the District of Columbia within sixty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the Territory of Hawaii, wherein James L. Holt, Tax Assessor and Collector of the First Taxation Division of the Territory of Hawaii is plaintiff in error and you are defendant in error, to show
15 cause, if any there be, why the judgment rendered against said plaintiff in error as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. F. Frear, Chief Jusice of the Supreme Court of the Territory of Hawaii, this 21st day of May, A. D. 1906.

[Seal Supreme Court, Territory of Hawaii.]

W. F. FREAR,
Chief Justice of the Supreme Court of the
Territory of Hawaii.

16 In the District Court of Honolulu, County of Oahu, Territory of Hawaii.

JAMES L. HOLT, Tax Assessor of the First Taxation Division of the Territory of Hawaii, Plaintiff,

vs.

A. TULLETT, Defendant; THE INTER ISLAND STEAM NAVIGATION COMPANY, LIMITED, a Corporation, Garnishee.

Affidavit in Support of Motion for Attachment.

ISLAND AND COUNTY OF OAHU, *Territory of Hawaii, ss:*

James L. Holt, being first duly sworn, deposes and says: That he is the Tax Assessor of the First Taxation Division of the Territory of Hawaii, named as Plaintiff in the above entitled suit. That in the above suit on the 5th day of September, A. D. 1905, a judgment against the above named Defendant was duly obtained in this Court for the sum of One Hundred twenty dollars and thirty eight cents ($120.38), and for Court Costs, amounting to Three Dollars and Ten Cents ($3.10).

That thereafter, on the 10th day of October, A. D. 1905, execution was duly issued out of this Court, directed to the Sheriff of the County of Oahu, directing him, the said Sheriff as aforesaid, to levy upon the property of the above named judgment debtor, within the County of Oahu.

That thereafter, and on the 16th day of October, A. D. 1905 the Sheriff of the County of Oahu returned said execution heretofore issued against the property of the aforesaid judgment debtor wholly unsatisfied, and that said judgment still remains wholly unsatisfied and unpaid.

That the Inter Island Steam Navigation Company, Limited, a Corporation, duly organized and existing under and by virtue of the laws of the Territory of Hawaii, located and doing business and existing within the jurisdiction of this Court, is indebted to the judgment debtor above named in a sum of money, to wit: the sum of Sixty five Dollars and No Cents ($65.00).

Wherefore, deponent prays that the said sum of money, to wit, the sum of Sixty Five Dollars and No Cents ($65.00), in the hands of the Inter Island Steam Navigation Company, Limited, be attached, to answer the judgment debt herein, and that the said Inter Island Steam Navigation Company, Limited, Garnishee herein, appear before the Judge of this Court on a day certain, to be set therefore in the order of this Court, to show cause why it should not pay the judgment creditor herein the debt due from it to the judgment debtor.

(Signed) JAMES L. HOLT,
Tax Assessor, First Taxation Division.
Territory of Hawaii.

Subscribed and sworn to before me this 1st day of February, A. D. 1906.

(Signed) GEORGE LUCAS,
Clerk First Circuit Court.

17 I hereby certify that the foregoing is a true and correct copy of the original.

(Signed) WM. L. WHITNEY,
District Magistrate of Honolulu, County of Oahu.

18 In the District Court of Honolulu, County of Oahu, Territory of Hawaii.

JAMES L. HOLT, Tax Assessor of the First Taxation Division of the Territory of Hawaii, Plaintiff,

vs.

A. TULLETT, Defendant; THE INTER ISLAND STEAM NAVIGATION COMPANY, LIMITED, a Corporation, Garnishee.

Order for Attachment.

On reading and filing the annexed affidavit of James L. Holt, Tax Assessor, of the First Taxation Division of the Territory of Hawaii, Plaintiff above named, whereby it appears that judgment was recovered in an action as above entitled in this Court on the 5th day of September, A. D. 1905, for the sum of One Hundred Twenty Dollars and thirty eight cents ($120.38) and for Court Costs amounting to Three Dollars and Ten cents ($3.10) in favor of the plaintiff and against the above named Defendant, and that thereafter, on the 10th day of October, A. D. 1905, execution was duly issued thereon out of this Court, directed to the Sheriff of the County of Oahu, directing him, the said Sheriff as aforesaid, to levy upon the property of the aforesaid judgment debtor within the County of Oahu; that thereafter, and on the 16th day of October, A. D. 1905, the Sheriff of the County of Oahu returned said execution heretofore issued against the property of the aforesaid judgment debtor wholly unsatisfied, and that said judgment still remains wholly unsatisfied and wholly unpaid; and that the Inter-Island Steam Navigation Company, Limited, a corporation duly organized and existing under and by virtue of the laws of the Territory of Hawaii, is indebted to the judgment debtor above named in the sum of Sixty Five Dollars and No Cents ($65.00), and that the said Inter Island Steam Navigation Company, Limited, the Garnishee named herein, is within the jurisdiction of this Court:

It is hereby ordered that the aforesaid sum of Sixty Five Dollars and no cents ($65.00) in the hands of the Inter Island Steam Navigation Company, Limited, Garnishee named herein, be attached in the hands of the said Garnishee and be held by it to answer the judgment debt herein.

And it is further ordered that the Inter Island Steam Navigation

Company Ltd. Garnishee named herein, appear before me, Judge of this Court, and on the 6th day of February, A. D. 1906, at 2 o'clock P. M. of said day, at the Court Room of this Court, located in Honolulu, in the Island and County of Oahu, Territory of Hawaii, then and there to show cause why it should not pay the judgment creditor named herein the debt due from it to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt.

It is further ordered that a certified copy of this order be served upon the Inter Island Steam Navigation Company Ltd. the Garnishee named herein, and that such order when so served as aforesaid, shall be sufficient notice to the garnishee herein, and shall bind the said sum of money, to wit: the sum of Sixty Five Dollars and No Cents, ($65.00) attached herein in its hands.

19 Dated Honolulu, February 2, A. D. 1906.

(Signed) WM. L. WHITNEY,
District Magistrate of Honolulu.

SECTION 2122, Rev. Laws. Whensoever any person summoned as an attorney, agent, factor or debtor of any defendant, may be desirous of so doing, he may apply to the Magistrate or any Judge of the Court from whom or which the same summons may have issued, and the Magistrate or Judge having caused reasonable notice to be given to the plaintiff in the action, shall proceed to take the deposition of the person thus summoned, and make such order as may be proper in the premises, at any time previous to the day appointed for hearing the cause, and the person so summoned as agent, factor, trustee, or debtor of the defendant, shall be taken to have obeyed the summons.

I hereby certify that the foregoing is a full, true and correct copy of the original.

(Signed) WM. L. WHITNEY,
District Magistrate of Honolulu, Oahu.

Served the within Summons, Motion and Order for Attachment on the Inter Island Steam Navigation Company, Limited, therein, named Garnishee, through Jas. I. McLean, its Vice President, by leaving with him a true and a-tested copy thereof, at Honolulu, Island of Oahu, Territory of Hawaii, this 2nd day of February, A. D. 1906.

(Signed) HARRY K. CLARK,
Police Officer.

I hereby certify that the foregoing is a true and correct copy of the original.

(Signed) WM. L. WHITNEY,
District Magistrate of Honolulu, Oahu.

In the District Court of Honolulu, County of Oahu, Territory of Hawaii.

JAMES L. HOLT, Tax Assessor of the First Taxation Division of the Territory of Hawaii, Plaintiff,

vs.

A. TULLETT, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Garnishee.

Answer of Inter-Island Steam Navigation Company, Limited, Garnishee.

Now comes the Inter-Island Steam Navigation Company, Limited, Garnishee, and answering the order of attachment and the order to show cause heretofore made and issued in the above entitled action on the 1st day of February 1906, avers and alleges as follows:

I.

Avers that the judgment recovered by said plaintiff against said defendant in the above entitled action is null and void and that the Court was without jurisdiction to make and render such judgment, or to make and issue the said order of attachment and order to show cause and that said order to show cause and said order of attachment are not binding upon said defendant and said garnishee and are wholly null and void and without force and effect.

II.

Avers that the said defendant is an American seaman in the employ of said garnishee; that the sum attached by said order of attachment is money due said defendant by said garnishee as wages, and that any wages due or accruing to said defendant by said garnishee, are not subject to attachment or arrestment by the above entitled court, all as provided by Section 4536 of the Revised Statutes of the United States; that said defendant has threatened to institute suit against the said garnishee for the recovery of the sum of money attached in its hands by said order of attachment made and issued herein by the above entitled court on said 1st day of February 1906, in the event that said garnishee pays over the whole or any part of said sum attached to said plaintiff, and that said garnishee cannot with safety pay over to said plaintiff any wages which might be decreed to be due and owing to said defendant by said garnishee by reason of Sections 4530 and 4547 inclusive of the Revised Statutes of the United States.

Wherefore, said Inter Island Steam Navigation Company, Limited prays for judgment dismissing said order of attachment and order to show cause, and for its costs.

(Signed) INTER ISLAND STEAM NAVIGATION COMPANY, LIMITED,

(Signed) By N. E. GEDGE, *Treasurer.*

Honolulu, February 2, 1906.

21 I hereby certify that the foregoing is a full, true and correct copy of the original.

(S'g'd) WM. L. WHITNEY,
District Magistrate of Honolulu, County of Oahu.

22 In the District Court of Honolulu, Island and County of Oahu, Territory of Hawaii.

JAS. L. HOLT, Tax Assessor, First Taxation Division, Territory of Hawaii, Plaintiff,
vs.
A. TULLETT, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Garnishee.

Attachment.

TUESDAY, *February* 6, 1906.

Continued to February 8, 1906.

THURSDAY, *February* 8, 1906.

From February 6, 1906.
Continued to February 9, 1906, at 9 o'clock A. M.

FRIDAY, *February* 9, 1906.

From February 8, 1906.
W. S. Fleming, Deputy Attorney General, for plaintiff.
A. Lewis, attorney for Garnishee.
Plaintiff reads Complaint and Order.
Defense reads and files Answer.

N. E. GEDGE, sworn: Am Treas. of the Inter-Island Steam Navigation Co. Was such in January & February. Know A. Tullett. He's master of one of our steamers, "Keauhou." He had salary due him for January and February. On Feb. 2, 1906, there was salary due deft. from the Inter-Island Steam Navigation Co., as garnishee. Sum of $65. was due deft. on first and second February. A. Tullett, is American seaman. It is a subject of discussion by seamen employ. They threatened to tie the vessels up even though the judgment of this Court be rendered against them. The deft. threatened to institute suit against the garnishee. A. Tullett has been American seaman.

X-examined:

On day this Order of Garnishee was made, the sum of $65. was due deft. and which I now hold.

(Stipulated that A. Tullett is in employ of I. I. S. Navigation Co., and that Keauhou plies within ports of islands of Territory of Hawaii and not with ports of Territory of Hawaii and the mainland.)

(Stipulated that A. Tullett is resident of Honolulu, Oahu, T. H.)

Decision reserved until February 14, 1906.

23 FRIDAY, *February* 16, 1906.

From February 9, 1906.
For Decision.

Judgment for the Plaintiff against the Garnishee Inter-Island Steam Navigation Co., for the sum of $65. due the deft. A. Tullett.

I hereby certify that the foregoing is a full, true and correct copy of the minutes of the proceedings had in the above entitled matter.

(S'g'd) WM. L. WHITNEY,
District Magistrate of Honolulu, County of Oahu.

24 In the District Court of Honolulu, County of Oahu, Territory of Hawaii.

JAMES L. HOLT, Tax Assessor, First Taxation Division, Territory of Hawaii, Plaintiff,

vs.

A. TULLETT, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, Garnishee.

An order having been duly issued by me as District Magistrate of Honolulu on the first day of February, 1906, attaching in the hands of the garnishee above named the sum of Sixty-five Dollars ($65.00) to the end that said sum so attached as aforesaid should be applied towards the payment of a judgment duly entered in this Court on the 5th day of September, 1905, in favor of the plaintiff and against the defendant for the sum of One Hundred and Twenty Dollars and Thirty Eight Cents ($120.38) and Three Dollars and Ten Cents ($3.10), Costs, and further requiring the garnishee above named to show cause on the 6th day of February, A. D. 1906, why said sum of Sixty Five Dollars ($65.00) so attached as aforesaid should not be paid over to the plaintiff above named on account of his said judgment against the defendant and said garnishee, on the 9th day of February, A. D. 1906, to which date examination herein was continued appearing before this Court and admitting that it had in its possession due and owing to the defendant above named the sum of Sixty Five Dollars ($65.00) and said garnishee having filed an answer herein; now after reading and filing the answer of said garnishee, and after considering the testimony offered herein on behalf of the plaintiff and garnishee herein, and due deliberation having been had, it is hereby

Ordered: That the garnishee above named pay into this Court, on account of the judgment herein above set forth, in favor of the plaintiff and against the defendant, the sum of Sixty Five Dollars ($65.00), and in default thereof that execution issue out of this Court to levy upon the amount due from such garnishee towards satisfaction of the judgment debt.

Dated Honolulu, February 17, A. D. 1906.

(Sgd.) WM. L. WHITNEY,
District Magistrate of Honolulu.

I hereby certify that the foregoing is a full, true and correct copy of the original.

(Sgd.) WM. L. WHITNEY,
District Magistrate of Honolulu, County of Oahu.

25 In the District Court of Honolulu, County of Oahu, Territory of Hawaii.

JAMES L. HOLT, Tax Assessor, First Taxation Division, Territory of Hawaii, Plaintiff,
vs.
A. TULLETT, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Garnishee.

Notice of Appeal and Appeal.

Notice is hereby given that the above named Garnishee the Inter-Island Steam Navigation Company, Limited, hereby gives notice of appeal and does hereby appeal to the Supreme Court of the Territory of Hawaii from the decision heretofore rendered, to wit, on the 17th day of February, 1906, and served on the 17th day of February, 1906, by the said District Court, ordering the said Garnishee above named to pay into the said District Court the sum of Sixty-five Dollars ($65.00) on account of the judgment rendered in the above entitled action in favor of plaintiff against defendant. Said appeal is based solely upon the following points of law:

(*a*) That the judgment recovered by said plaintiff against said defendant in the above entitled action is null and void, and that the Court is without jurisdiction to make and render said judgment or to make and issue said order of attachment and said order to show cause, and that said order to show cause and said order of attachment are not binding upon said defendant and said garnishee.

26 (*b*) That the moneys attached by virtue of said order of attachment were and are wages due by said garnishee to said defendant who is an American seaman, and that said moneys are not subject to attachment as provided by Section 4536 of the Revised Statutes of the United States.

Dated, Honolulu, February 23, 1906.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED,
(Sgd.) By N. E. GEDGE, *Treasurer.*

27 District Court of Honolulu, County of Oahu, Territory of Hawaii.

JAMES L. HOLT, Tax Assessor, First Taxation Division, Territory of Hawaii, Plaintiff,

vs.

A. TULLETT, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Garnishee.

Certificate of Appeal.

I hereby certify that on the 16th day of February, 1906, in the above entitled cause, a proceeding in attachment instituted by the plaintiff and attaching in the hands of the garnishee certain funds due and owing to the defendant by said garnishee, (as fully set forth in the copy of the "Affidavit in Support of Motion for Attachment" sent herewith, and made a part hereof), I gave judgment in favor of the plaintiff and against the garnishee for the sum of $65.00, to be paid over to the plaintiff, as the sum due and owing to said defendant by said garnishee; and that an appeal from said judgment was duly noted by the said garnishee to the Supreme Court of the Territory of Hawaii, upon the points of law stated in said garnishee's Notice of Appeal sent herewith; and that said appeal has since been duly perfected.

A full and correct copy of my record in said case is hereto attached.

Given under my hand this 3rd day of March, 1906.

(Sgd.) WM. L. WHITNEY,
District Magistrate of Honolulu, County of Oahu.

Memorandum of Costs.

Costs of Court, paid by appellant	$4.65
Costs of Notice and Certificate of Appeal	1.10
Total	$5.75

28 In the Supreme Court of the Territory of Hawaii, October Term, 1905, March Session, 1906.

JAMES L. HOLT, Tax Assessor and Collector, First Taxation Division, Territory of Hawaii, Plaintiff,

vs.

A. TULLETT, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Garnishee.

Memorandum on Behalf of Defendant Inter-Island Steam Navigation Company, Limited, Garnishee.

The Garnishee Inter-Island Steam Navigation Company, Limited, occupies very much the position of an interpleader in this case.

It stands ready and willing to pay over the funds in its hands to whomsoever the Court may finally decide is entitled to the same. The defendant A. Tullett, being an American seaman, claims that under Section 4536 of the Revised Statutes of the United States his wages are exempt from execution. Section 4536 of the Revised Statutes provides as follows: "No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court; and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages, or of any attachment, incumbrance or arrestment thereon; and no assignment or sale of wages, or of
29 salvage, made prior to the accruing thereof, shall bind the party making the same, except such advance securities as are authorized by this Title."

The seamen contend that execution process is an attachment or an arrestment within the meaning of Section 4536 and have threatened the Company that if the money is paid over to the Tax Assessor they will under Section 4536 summons the Company to appear before the United States District Court for the Territory of Hawaii to answer for the non-payment of their wages. The Company is desirous of rendering itself amenable to the law and make payment to the Tax Assessor, yet, at the same time, it recognizes the force and effect of Section 4536, and therefore desires the protection of a ruling by the Supreme Court of the Territory of Hawaii as to whether or not the wages of the defendant are subject to attachment and arrestment under the provisions of Section 4536. In other words, whether Section 4536 applies only to attachment or arrestment prior to judgment and not to executions issued upon a judgment after the seaman has had an opportunity to be first heard, and the claim of his creditor adjudicated. Ross *vs.* Bourne, 14 Fed. 858.

Dated Honolulu, March, 1906.

Respectfully,

(S'g'd) SMITH & LEWIS.

30 In the Supreme Court of the Territory of Hawaii, October Term, 1905.

JAMES L. HOLT, Tax Assessor, Plaintiff,

v.

A. TULLETT, Defendant; I. I. S. N. Co., LTD., Garnishee.

Appeal from District Magistrate, Honolulu.

Submitted March 8, 1906. Decided March 19, 1906.
Frear, C. J., Hartwell and Wilder, JJ.

Garnishment—seamen's wages cannot be made subject to.

A seaman's wages cannot be attached or made subject to garnishee process. U. S. R. S., Section 4536.

31 *Opinion of the Court by Wilder, J.*

(Frear, C. J., Dissenting.)

Plaintiff secured judgment against defendant in the district court of Honolulu for the sum of $120.38. Execution on this judgment was returned wholly unsatisfied. Then under Section 2118 of the Revised Laws the garnishee was cited in and ordered to pay plaintiff the sum of $65 found to be due defendant as wages from the garnishee. From this decision of the district court the garnishee appealed to this court on the point of law that it was and is void because defendant was a seaman within the meaning of Section 4536 of the U. S. Revised Statutes and his wages were not subject to garnishment or arrestment from any court.

Section 4536 of the U. S. Revised Statutes is as follows: "No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court; and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages, or of any attachment, incumbrance, or arrestment thereon; and no assignment or sale of wages, or of salvage, made prior to the accruing thereof, shall bind the party making the same, except such advance securities as are authorized by this Title."

It is claimed by the garnishee and admitted by the plaintiff that the defendant is a seaman within the meaning of that section. There being no issue raised as to whether defendant is a seaman within the meaning of that section, and that statute under the Organic Act having the same force and effect in this Territory as elsewhere in the United States, the only question to be decided is whether wages due a seaman may be attached or subjected to garnishee process after a judgment against him.

Plaintiff admits that such wages cannot be attached or subjected to garnishment before judgment, but contends that after
32 judgment the statute does not prevent attachment or garnishment. We fail to see the distinction. There is no question but that this statute was enacted for the protection of seamen; the effect of it is to nail the wages of a seaman to the mast of his ship And, if a seaman's wages for his own benefit are protected from attachment, what difference does it make to him whether they are attached before or after judgment. In our opinion there is no such distinction as is contended for.

It is desirable for seamen and in the interests of the public that nothing shall obstruct the right of seamen to get their wages. This right the statute protects. See McCarty *v.* City of New Bedford, 4 Fed. 818. The seamen themselves cannot lawfully assign or anticipate their wages. See The George W. Wells, 118 Fed. 761.

A judgment against a seaman gives the judgment creditor a right to levy execution on all property of the seaman liable to execution, but under the federal statute the right of a seaman to be paid his wages cannot be attached or arrested by execution or garnishee pro-

cess. See McCarty *v.* City of New Bedford, *supra;* The St. Louis, 48 Fed. 312.

The cases of Telles *v.* Lynde, 47 Fed. 912, and *In re* The Queen, 93 Fed. 834, are relied on by plaintiff. If these cases hold, as claimed, that wages due a seaman may be seized under an execution issued on a valid judgment in a state court, they are not good law, because the wages (that is, the right to the wages), were attached and arrested whether called by garnishment, trustee process, foreign attachment, proceedings supplemental to execution or execution itself. The contention claimed for is also opposed to the views, or the logical deduction therefrom, of Judges Benedict, (4 Fed. 818) Nelson, (14 Fed. 858), Brown, (20 Fed. 57) and Lowell (17
33 Fed. 627, 703). And what is more, it is opposed to the plain and ordinary meaning of the words of the statute.

The decision of the district magistrate is reversed and the order of attachment is dismissed.

M. F. Prosser, Deputy Attorney General, (E. C. Peters, Attorney General, with him on the brief), for plaintiff.

Smith & Lewis for the garnishee.

(S'g'd) A. A. WILDER.

34 *Concurring Opinion of Hartwell, J.*

In Simerson *v.* I. I. S. Nav. Co., 1 Dole, 189, the court mentions the cases in which U. S. District Judge Morrown, 47 Fed. 912, and U. S. District Judge De Haven, 93 Fed. 834, decided that the statute does not exempt seamen's wages from execution, but does not decide the question arising in this case. Those decisions may be controlled by provisions in the California statute or by considerations of comity for the judgments of a state court which had been made in those cases.

The act entitled "To Consolidate and Amend the Law Relating to the Garnishee Process to Facilitate the Collection of Debts." Ch. 35 Laws 1876 (Ch. 135, R. L.), provides: "Whenever the goods or effects of a debtor are concealed in the hands of his attorney, agent, factor or trustee so that they cannot be found to be attached or levied upon, or when debts are due from any such person to a debtor," the goods and effects and debt "shall be secured" to pay such judgment as the plaintiff shall recover, and after judgment, "shall be liable to pay the same." The plaintiff, "on praying out execution, may direct the officer serving the same to make demand of such agent, attorney, factor or trustee of the goods and effects of the defendant in his hands, whose duty it shall be to expose the same to be taken on the execution, also to make demand of such debtor for any debt or such part thereof as shall satisfy such judgment as may be due to the defendant, and it shall be the duty of such debtor to pay the same," and after judgment the judge may order that such debts "be attached to answer the judgment debt" and "may order execution to issue to levy the amount due." The statute, it will be seen, treats the debt as "attached" whether before or after judgment.

35 The federal statute, enacting that seamen's wages shall not be subject to attachment, does not except attachments after judgment, and the court has no authority to make the exception. I therefore concur.

(S'g'd) ALFRED S. HARTWELL.

36 *Dissenting Opinion of Frear, C. J.*

The plaintiff recovered judgment against the defendant, the captain of a steamer, for taxes. Execution was issued and returned unsatisfied. The plaintiff then instituted what are usually called proceedings supplemental to execution, by citing in the owner of the steamer, a corporation, for the purpose of having the wages due and unpaid by it to the captain applied to the judgment under R. L. Sec. 2118. The defense of the owner is that the wages of the captain are exempt from execution and proceedings supplemental to execution as well as from ordinary attachment and garnishment under the federal statute (R. S., Sec. 4536) which provides that "no wages due or unpaid to any seaman or apprentice shall be subject to attachment or arrestment from any court," and that if it (the owner) should be required to apply the wages to the judgment, the captain could nevertheless recover such wages from it in an action in admiralty in the federal court, and thus it would be required to pay twice. It seems to me that the language of the statute, the reason of the statute and the cases that construe it are all against this contention. I assume for the purposes of this case that the captain is a seaman within the meaning of the statute.

1. The statute in its language exempts wages from "attachment and arrestment." Arrestment, I understand, is merely a Scotch term for attachment. Attachment, of course, includes garnishment, which is merely the term for an attachment of property or debts in the hands of a third person. Attachment in a broad sense would, of course, include almost any seizure of person or property under judicial process, including a seizure on execution, but in its ordinary and proper sense it refers to mesne rather than final process. In 4 Cyc. 395, the first note under the article on attachment contains the following: "Distinguished from Execution.—An attach-

37 ment has but few of the attributes of an execution, execution being a judicial process for obtaining debt or damages recovered by judgment, and final in its character, while the attachment is but mesne process, liable at any time to be dissolved and the judgment upon which may or may not affect the property seized." Waples on Attachment, Sec. 1, says: "Attachment, as generally authorized, * * * is a remedy for the collection of ordinary debt by preliminary levy upon property of the debtor to conserve it for eventual execution after the lien shall have been perfected by judgment. * * * Garnishment is attachment in the hands of a third person, * * * the creation of an inchoate lien to be perfected by judgment; the conservation of the debtor's property to secure the payment of the debt." The proceeding now in question, though sometimes called attachment or garnishment, is usually re-

ferred to as a proceeding supplemental to execution. It is treated under that title as a branch of the law of executions, not as a branch of the law of attachment, in the text books and cyclopaedias. The fullest treatment is found in 17 Cyc. 1402 *et seq.* Our statute on the subject, beginning with R. L., Sec. 2117, although included in the chapter on garnishment, was not a part of the original act of garnishment passed in 1856 although included in the later consolidated act of 1876 on that subject. It was copied from the English statute and is found, with various modifications, in the statutes of many of the American states. The proceeding is not brought for the purpose of tying up or holding the debt or property in the hands of the third person to await the result of an action against the defendant which may result favorably or unfavorably to him, but is brought only after judgment is obtained against the defendant and execution has issued and been returned unsatisfied. Its object is to apply the property or debt immediately to the satisfaction of the judg-
38 ment or expose it for sale immediately by the sheriff on execution. If the existence or validity of the debt is disputed or is doubtful the proceeding is usually dismissed immediately and the parties are left to their ordinary legal remedies, because the court at that state, in the absence of statutory provision, has no power to try the question. The proceeding is a substitute for a creditor's bill. It is in the nature of execution. The words in the federal statute should be construed in their ordinary sense. If exemption from execution as well as from attachment had been intended the words ordinarily used to express such an intention would have been used. The rest of the section, which is quoted in Mr. Justice Wilder's opinion, bear out this view. While it is true that the word "attach" is sometimes used in reference to executions just as the word "levy" is sometimes used in reference to attachments, the real distinction between attachment and executions should not be lost sight of through a mere confusion of words.

2. The reason of the statute is found in the improvident character of seamen and the peculiar circumstances under which they are placed and the consequent need of their protection. To permit a retention of their wages pending a suit of uncertain duration and result would often work a great hardship upon them, but to allow their wages to be applied in payment of a just debt conclusively determined by a judgment would not be a hardship in a legal sense. The object of the statute is to prevent a suspension of wages by attachment or garnishment pending an action that may turn out to be unfounded, and not to prevent their application on execution to the payment of a just debt. In a certain sense a payment of a seaman's just debt would be a payment to him. It would be a payment on his account.

3. As to the cases, reference will be made first to the one most relied on by the majority, McCarty *v.* The City of New Bed-
39 ford, 4 Fed. 818, in which it was said that the federal statute now in question, which was copied from an English statute, was merely declaratory of the general maritime law and that therefore even in the absence of such a statute a state court was abso-

lutely without jurisdiction to attach a seaman's wages. Even if that were good law it would have no application to the present case because that was a case of ordinary attachment or garnishment and not of execution or a proceeding supplemental to execution. Apparently, however, it was not good law. See the elaborate opinion by Chief Justice Gray in Eddy *v.* O'Hara, 132 Mass. 56, and the later decision in White *v.* Dunn, 134 Mass. 271. The result of these cases and the later federal cases, namely, Ross *v.* Bourne, 14 Fed. 858; 17 Fed. 703; The City of New Bedford, 20 Fed. 57, was that, in the absence of statute, a seaman's wages could be reached by ordinary attachment or garnishment proceedings in a state court, but that prior to their actual payment under such proceedings, an action could be prosecuted by the seaman for his wages in a federal court, that is, the federal would not require the seaman to wait until the termination of the proceedings in the state court, but whenever payment was actually made under the process of either the state or the federal court the other court would dismiss the proceedings before it and not compel the party from whom the wages were due to pay a second time. All these cases were decided when the statute now in question was not applicable and related to ordinary attachment or garnishment on mesne process and not to execution or proceedings supplemental thereto. Even under the statute when it was made applicable a federal court under certain circumstances would not compel a party to pay a second time after payment under state process. The St. Louis, 48 Fed. 312. I have no doubt, however, that under the statute a state or territorial court should not attach the wages under mesne process. Thus there are no cases against my view. On the contrary the following cases support it.

In Telles *v.* Lynde, 47 Fed. 912, the court said, referring to the federal statute now relied on, "The section provides that 'no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment.' The libelant's wages were not taken from the respondents under attachment or arrestment, but under execution, and the proceedings supplementary thereto. The law does not exempt seamen's wages from such process, and the court therefore had jurisdiction to make the appropriation it did in satisfaction of the judgment against libelant." The court referred to was a justice's court in San Francisco corresponding to our magistrate's court and the proceedings supplementary to execution referred to were under a statute of the same character as ours. In the Queen, 93 Fed. 834, in which also proceedings in a San Francisco justice's court were involved, the court said: "The claim of the libelant is that the wages of seamen are exempt from execution under the general rule of the maritime law, and also by the express provisions of section 4536 of the Revised Stat-es of the United States," and after referring to the general maritime law on this subject and the hardships of seamen on which it is founded, continued: "There is, however, a marked difference between an attachment to secure the payment of an asserted, and, it may be, disputed and unfounded, claim, and the levy of an execution which simply seizes upon property of

a debtor for the purpose of satisfying a valid judgment; and my attention has not been called to any case in which it has been decided that the wages of a seaman may not be taken on execution issued out of a state court, in the absence of a statute exempting them from such seizure, or in which it has been held that a prior payment of the amount due a seaman for wages, in satisfaction of an execution issued against him, would not constitute a good defense to a
41 subsequent action brought by him in admiralty for the recovery of such wages. In such a case it cannot be said that the seaman has not had the full benefit of the wages earned by him. Their application, under a lawful execution, to the payment of a debt of his, which is conclusively presumed to be just, and which he is bound, in conscience, to pay, is not oppressive, in a legal sense; and a court of admiralty will not, under such circumstances, decree that what has already been paid for his benefit shall be again paid to him. In regard to the second contention of libelant, nothing more need be said than that section 4536 of the Revised Statutes, in providing, as it does, that 'no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court,' is not broad enough to cover the case of a seizure of a seaman's wages on execution (Telles *v.* Lynde, 47 Fed. 912), and therefore has no application to the present case." In Simerson *v.* I. I. S. Nav. Co., 1 Dole 181, it is said that, "The cases of Telles *vs.* Lynde, 47 Fed. Rep. 912, and The Queen, 93 Fed. Rep. 834, decide that the law in question, Section 4536 of the Revised Statutes, does not exempt seamen's wages from an execution." I fully agree with the conclusions of these federal courts. Even if my own impression were the other way, I should feel that, in the absence of any decision to the contrary, I ought to follow the construction placed by three federal courts in this, the ninth circuit, on a federal statute, especially when the question is at least a doubtful one and that construction is favorable to our own jurisdiction and to the rights of our own Territory and people. In The City of New Bedford, *supra*, even the federal court in one circuit, in Ross *v.* Bourne, *supra*, followed the decision by the federal court of another circuit in a case originating in the latter notwithstanding the earlier contrary decision in McCarty *v.* The City of New Bedford, *supra*, by a federal court in the former circuit.

42 Thus, from whatever point it is viewed, the statute in question has no application to the present case and accordingly the judgment of the district magistrate should be affirmed.

(S'g'd) W. F. FREAR.

(Endorsed:) Filed March 19, 1906, (S'g'd) George Lucas, Clerk.

43 In the Supreme Court of the Territory of Hawaii, October Term, 1905, March Session, 1906.

JAMES L. HOLT, Tax Assessor and Collector, First Taxation Division, Territory of Hawaii, Plaintiff,
vs.
A. TULLETT, Defendant; INTER-ISLAND STEAM NAV. CO., Garnishee, Appellant.

Judgment.

This cause, on appeal from an order of the District Magistrate of Honolulu, Territory of Hawaii, dated the 17th day of February, 1906, directing and requiring the garnishee appellant above named to pay over to the plaintiff respondent the sum of Sixty-five Dollars, came on to be heard before this Court at the October Term 1905 thereof, March Session, A. D. 1906, and was argued by counsel for plaintiff and garnishee.

It is considered by the Court and it is now ordered and adjudged that the order of the District Magistrate of Honolulu, Territory of Hawaii, dated the 17th day of February, 1905, appealed from, be vacated and set aside and judgment is herein and hereby rendered and entered in favor of said garnishee appellant and against the plaintiff appellee dismissing said proceedings as against said garnishee.

Dated Honolulu, this 19th day of May, as of the October Term 1905, March Session, 1906.

By the Court.

[SEAL.] (Sig.) HENRY SMITH, *Clerk.*

44 In the Supreme Court of the Territory of Hawaii, October Term, 1905, March Session, 1906.

JAMES L. HOLT, Tax Assessor and Collector, First Taxation Division, Territory of Hawaii, Plaintiff,
vs.
A. TULLETT, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Garnishee.

Motion for Reargument.

Now comes Appellee in the above entitled action and moves this Honorable Court for a reargument of said cause on its petition for rehearing, said petition for rehearing being hereto annexed.

(Sgd.) JAMES L. HOLT,
Tax Assessor, &c., Plaintiff, Appellee.
(Sgd.) By M. R. PROSSER,
Dep't Att'y General.

45 In the Supreme Court of the Territory of Hawaii, October Term, 1905, March Session, 1906.

JAMES L. HOLT, Tax Assessor and Collector, First Taxation Division, Territory of Hawaii, Plaintiff-Appellee,

vs.

A. TULLETT, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Garnishee-Appellant.

Notice.

To the Inter-Island Steam Navigation Company, Limited, Appellant above named, and to Smith & Lewis, its Attorneys:

You and each of you will please take notice that the appellee in the above entitled cause has this day filed its petition for rehearing and motion for reargument of said cause on the appeal thereof, copy of which said petition and motion for reargument are hereto annexed and that on Tuesday, the 10th day of April, 1906, at 10 o'clock A. M. of said day or as soon thereafter as counsel can be heard in the Court-room of said court in the Judiciary Building, in Honolulu, said Territory, the said Appellee will present said petition and motion for reargument to said Court.

Dated Honolulu, April 7, 1906.

(Sgd.) M. F. PROSSER,
Dep't Att'y General, Attorney for Appellee.

46 Due service by copy of the within notice, petition and motion is hereby admitted this 7th day of April, 1906, and consent given to hearing of motion for reargument on April 10th, 1906.

(Sgd.) SMITH & LEWIS,
Attorneys for Appellant.

47 In the Supreme Court of the Territory of Hawaii, October Term, 1905, March Session, 1906.

JAMES L. HOLT, Tax Assessor and Collector, First Taxation Division, Territory of Hawaii, Plaintiff-Appellee,

vs.

A. TULLETT, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Garnishee-Appellant.

Petition for Rehearing.

Now comes James L. Holt, Plaintiff Appellee in the above entitled action, and humbly petitions this Honorable Court for a rehearing of the above entitled action before this Honorable Court on the following ground: That the decision of the Supreme Court rendered in the above entitled action is in conflict with two controlling de-

cisions rendered by the United States District Court being assigned to the Ninth Circuit. That the Territory of Hawaii has been assigned to the Ninth Circuit and is consequently assigned to the same Circuit as the District Court of the United States for the Northern District of California. That the said District Court of the Ninth Circuit has rendered two decisions involving the precise questions raised by this appeal in the cases of Telles *v.* Lynde decided in 1891, and reported in 47 Federal Reporter, 912, and the case of the Queen, decided in 1899, and reported in 93 Federal Reporter 834. That
48 the question raised by this appeal and also decided in said cases before the United States District Court is the construction of a Federal Statute by a Federal Court. That said construction of said Federal Statute, to wit: Section 4536 of the Revised Statutes of the United States has been adopted and followed in this Ninth Circuit for 15 years. That full faith and credit should be given to said decisions of said United States District Court, and the rights of litigants should not be jeopardized and involved by conflicting decisions between Territorial Supreme Courts and the Federal Courts arising out of the construction of a Federal Statute. That the United States District Court for the Territory of Hawaii will undoubtedly follow the decisions of Telles *v.* Lynde and The Queen, as intimated in the case of Simerson *vs.* Inter-Island Steam Navigation Company, Ltd., 1 Dole, 181.

That this point as to the controlling effect of the United States District Court decisions was not argued by either counsel for appellant or appellee, and in fact the whole case was submitted on briefs and not properly or fully argued before the said Supreme Court upon the submission of the case on March 8th 1906.

That there are forty other cases now pending in the District Court of Honolulu upon the decision in this case.

That the proper assessment and collection of the taxes of this Territory depend upon the decision in this case and much confusion in the administration of justice by the Federal Court and Territorial Courts in this Territory will result from the decision in its present form.

Wherefore said Appellee prays that said Supreme Court do make its order in said cause granting to said Appellee a re-hearing
49 thereof, and a re-argument of the same before said Court on said appeal.

Dated Honolulu, April 7, 1906.

(S'g'd) JAMES L. HOLT,
Tax Assessor and Collector, First Taxation Division, Territory of Hawaii, Plaintiff-Appellee.

(S'g'd) By M. F. PROSSER.
Deputy Attorney General.

I hereby certify that I believe that the grounds urged in the foregoing petition for rehearing are well taken and that the same are not interposed vexatiously or for the purpose of delay.

(S'g'd) M. F. PROSSER.
Dept. Att'y General, Attorney for Appellee.

50 In the Supreme Court of the Territory of Hawaii, October Term, 1905.

No. 70.

JAMES L. HOLT, Tax Assessor, Plaintiff,
v.
A. TULLETT, Defendant; I. I. S. N. Co., LTD., Garnishee.

Appeal from District Court, Honolulu.

Petition for rehearing. Submitted April 7, 1906. Decided April 11, 1906.

Per Curiam:

The petition is denied.

M. F. Prosser, Deputy Attorney General, for petitioner.

(S'g'd) GEORGE LUCAS, *Clerk.*

51 In the Supreme Court of the United States, October Term, 1905.

JAMES L. HOLT, Tax Assessor and Collector, First Taxation Division, Territory of Hawaii, Plaintiff and Plaintiff in Error,
vs.
A. TULLETT, Defendant; INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED, Garnishee and Defendant in Error.

Clerk's Certificate.

TERRITORY OF HAWAII, *Island and County of Oahu, ss:*

I, Henry Smith, Clerk of the Supreme Court of the Territory of Hawaii and custodian of the records and archives of said Supreme Court, do hereby certify that pages numbered from
H. S., H. S. 1 to 50 inclusively and attached hereto, contains true, full and correct copies of the originals which are now on file in the Clerk's office of said Supreme Court in the above entitled cause.

In testimony whereof I have caused the seal of said Supreme Court of the Territory of Hawaii to be hereunto affixed at
52 Honolulu in said Territory this 21st day of May, A. D. 1906.

[Seal Supreme Court, Territory of Hawaii.]

HENRY SMITH,
Clerk of the Supreme Court of the Territory of Hawaii.

53 [Endorsed:] In the Supreme Court of the United States, October Term, 1905. James L. Holt, Tax Assessor and Collector, First Taxation Division, Territory of Hawaii, Plaintiff and Plaintiff in Error, *vs.* A. Tullett, Defendant; Inter-Island Steam Navigation Co., Ltd., Garnishee and Defendant in Error. Writ of Error and Certified Copy of Record. E. C. Peters, Att'y Gen'l, M. F. Prosser, Dep. Att'y Gen'l, Att'ys for Pl'ff in Error.

Endorsed on cover: File No. 20,590. Hawaii Territory supreme court. Term No. 244. James L. Holt, tax assessor and collector of the first taxation division of the Territory of Hawaii, plaintiff in error, *vs.* Inter-Island Steam Navigation Company, Limited. Filed February 25th, 1907. File No. 20,590.

If

Office Supreme Court, U. S.
FILED
MAR 24 1908
JAMES H. McKENNEY,

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1907.

No. 30.

JAMES L. HOLT, Tax Assessor, and Collector of the First Taxation Division of the Territory of Hawaii, Plaintiff in Error,

vs.

INTER-ISLAND STEAM NAVIGATION CO., LTD., Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

BRIEF FOR PLAINTIFF IN ERROR.

CHARLES R. HEMENWAY,
Attorney General of Hawaii.

MASON E. PROSSER,
Attorneys for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1907.

NO. 244.

JAMES L. HOLT, Tax Assessor, and Collector of the First Taxation Division of the Territory of Hawaii, Plaintiff in Error,

vs.

INTER-ISLAND STEAM NAVIGATION CO., LTD., Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF FACTS.

This is a writ of error to review the judgment of the Supreme Court of Hawaii, dated the 19th day of May 1906 (trans. p. 22), vacating and setting aside the order and judgment of the District Magistrate of Honolulu (trans. p. 12), whereby the Inter-Island Steam Navigation Co., defendant in error herein was directed to pay into Court on account of a judgment rendered in favor of the plaintiff in error and against the defendant, A. Tullett, the sum of Sixty-five Dollars ($65). The record shows that this is one of forty cases in which the questions of law herein involved were before the Court (trans. p. 24).

The record shows that the defendant, Tullett, is a seaman (trans. p. 11), being master of the steamer "Keauhou," plying between ports of the Territory of Hawaii and not between ports of the Territory of Hawaii and the Mainland (trans. p. 11).

That on the 9th day of February, 1906, there was due from the Inter-Island Steam Navigation Co. to the defendant, Tullett, as wages for the months of January and February, the sum of Sixty-five Dollars ($65) (trans. p. 11), said Tullett being a resident of Honolulu, Island of Oahu, Territory of Hawaii (trans. p. 11).

On the 5th day of September, 1905, a judgment was recovered in the District Court of Honolulu in favor of the plaintiff in error and against the defendant, Tullett, for the sum of One Hundred Twenty Dollars and thirty-eight cents ($120.38) and costs amounting to Three Dollars and ten cents ($3.10) (trans. p. 7).

Thereafter execution was duly issued upon said judgment against the property of the defendant, Tullett, which execution on the 16th day of October, 1905, was returned wholly unsatisfied (trans. p. 7).

On the 2nd day of February, 1906, upon an affidavit setting forth the foregoing facts an order attaching in the hands of said Inter-Island Steam Navigation Co. the said sum of Sixty-five Dollars ($65) due from it to the defendant, Tullett, for wages as aforesaid was issued by the District Magistrate of Honolulu (trans. p. 9), and thereafter on the same day the defendant in error, Inter-Island Steam Navigation Co., filed its answer setting forth that the defendant, Tullett, was an American seaman in the employee of said garnishee, that the money attached was money due from said Inter-Island Steam Navigation Co. to said Tullett as wages and that under Section 4536 of the Revised Statutes of the United States such wages were not subject to arrestment or attachment (trans. p. 10). The question of law involved is as to whether or not Section 4536 of the Revised Statutes has the effect of exempting from execution the wages of American seamen.

ARGUMENT.

I.

SECTIONS 2117, 2118, 2119, 2120 AND 2121 OF THE REVISED LAWS OF HAWAII THOUGH PROVIDING FOR GARNISHMENT ARE IN FACT PROCEEDINGS SUPPLEMENTARY TO EXECUTION AS KNOWN IN THE VARIOUS STATES OF THE UNION.

"Sec. 2117. Examination of judgment debtor. It shall be lawful for any creditor who has obtained a judgment in any court, to apply to the court or a judge thereof for a rule, order or summons that the judgment debtor shall be orally examined before a judge of such court, or such other person as such court or judge, if of a court of record, shall appoint, as to any and what debts are owing to him, and the court or judge may make such rule or order for the examination of such judgment debtor, and for the production of any books or documents, and the examination shall be conducted in the same manner as in the case of oral examination of witnesses under the law in that case made and provided."

"Sec. 2118. Attachment of debts, order. It shall be lawful for a judge of any court upon the ex parte application of such judgment creditor either before or after such oral examination and upon affidavit by the judgment creditor or his attorney stating that judgment has been recovered and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor and is within the jurisdiction, to order that all debts owing or accruing from such third person (hereinafter called the 'garnishee') to the judgment debtor, shall be attached to answer the judgment debt, and by the same or any subsequent order it may be ordered that the garnishee shall appear before the judge to show cause why he should not pay the judgment creditor the debt due

from him to the judgment debtor or so much thereof as may be sufficient to satisfy the judgment debt: provided that the judge may in his discretion, refuse to interfere when from the smallness of the amount to be recovered, or of the debt sought to be attached or otherwise, the remedy sought would be worthless or vexatious."

"S. c. 2119. Effect of order. Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee in such manner as the judge shall direct, shall bind such debts in his hands."

"Sec. 2120. Execution, when. If the garnishee does not forthwith pay into court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the judge may order execution to issue, and it may be sued forth accordingly without any previous writ or process to levy the amount due from such garnishee towards satisfaction of the judgment debt."

"Sec. 2121. Order to show cause, when. If the garnishee disputes his liability, the judge, instead of making an order that execution shall issue, may order that the judgment creditor shall be at liberty to proceed against the garnishee by writ calling upon him to show cause why there should not be execution against him for the alleged debt or for the amount due to the judgment debtor, if less than the judgment debt and for costs of suit, and the proceedings upon such suit shall be the same as nearly as may be upon a writ of revivor. Whenever it is suggested by the garnishee that the debt sought to be attached belongs to some third person who has a lien or charge upon it, the judge may order such third person to appear before him and state the nature and particulars of his claim upon such debt, and after hearing

the allegations of such third person under such order, and of any other person whom by the same or any subsequent order the judge may think fit to call before him, or in case of such third person not appearing before him upon such summons, the judge may order execution to issue to levy the amount due from such garnishee or the judgment creditor to proceed against the garnishee as in this chapter provided, and he may hear the claim of such third person or make such other order as he shall think fit upon such terms in all cases with respect to the lien or charge (if any) of such third person, and to costs as he shall think just and reasonable."

II.

SECTION 4536 OF THE REVISED STATUTES OF THE UNITED STATES DOES NOT EXEMPT WAGES OF SEAMEN FROM EXECUTION OR PROCEEDINGS SUPPLEMENTARY THERETO.

Section 4536 of the Revised Statutes provides as follows:

"No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court; and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages, or of any attachment, incumbrance or arrestment thereon; and no assignment or sale of wages, or of salvage, made prior to the accruing thereof, shall bind the party making the same, except such advance securities as are authorized by this Title."

Seamen's wages by the act in question are exempt from arrestment or attachment but not from execution.

The word arrestment is a term used in Scotch Law and is defined by Bouvier (vol. 1, p. 169), as follows:

> "The order of a Judge, by which he who is debtor in a movable obligation to the arrester's debtor is prohibited to make payment or delivery till the debt due to the arrestor be paid or secured.

Erskine, Inst. 3, 6, 1; 1, 2, 12.

Where arrestment proceeds on a depending action it may be loosed by the common debtor's giving security to the arrestor for his debt, in the event it shall be found due."

Erskine, Inst. 3, 6, 7.

This would be held to include attachment and necessarily garnishment. There is a clear distinction, however, between attachment and execution.

Thompson v. Baltimore, etc., 33 Md. 312;
Johnson v. Foran, 58 Md. 148.

It has been held in the United States Courts that the provision of the Revised Statutes above quoted does not apply to cases where judgment has been recovered against the defendant in a court of competent jurisdiction. It is only intended to prevent snap judgment against defendants, who by reason of the fact that they are seamen and not properly versed in business methods, would be only too apt to allow claims against them to go by default. For the reason stated in cases in the United States Courts the strong arm and protection of the law is by this statute thrown around a class of persons notoriously improvident. But where such persons, even though they be seamen, and within the protection of Section 4536, have been proceeded against according to law, and a valid claim against them has been adjudicated by a court of competent jurisdiction, the protection of the statute in question can no longer avail and prevent the collection of a just debt legally proven.

The leading case on the subject construing the statute in question, is that of *Telles v Lynde*, 47 Fed. Rep., 912, at page 916, where the Federal District Court, Northern District of California, construed the statute in question in the following words:

"But there is still another limitation to the exemption provided in this section, which is also conclusive of the libelant's claim in this case. The section provides that 'no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment.' The libelant's wages were not taken

from the respondents under the attachment or arrestment, but under execution, and the proceedings supplementary thereto. The law does not exempt seamen's wages from such process, and the court therefore had jurisdiction to make the appropriation it did in satisfaction of the judgment against libelant."

This case was in turn followed by "*In re The Queen*," reported in 93 Fed. Rep., at pages 834-835, where the same court held as follows:

"There is, however, a marked difference between an attachment to secure the payment of an asserted, and, it may be, disputed and unfounded, claim, and the levy of an execution which simply seizes upon property of a debtor for the purpose of satisfying a valid judgment; and my attention has not been called to any case in which it has been decided that the wages of a seaman may not be taken on execution issued out of a state court, in the absence of a statute exempting them from such seizure, or in which it has been held that a prior payment of the amount due a seaman for wages, in satisfaction of an execution issued against him, would not constitute a good defense to a subsequent action brought by him in admiralty for the recovery of such wages. In such a case it cannot be said that the seaman has not had the full benefit of the wages earned by him. Their application, under a lawful execution, to the payment of a debt of his, which is conclusively presumed to be just, and which he is bound, in conscience, to pay, is not oppressive, in a legal sense; and a court of admiralty will not, under such circumstances, decree that what has already been paid for his benefit shall be again paid to him."

See also,

Eddy v. O'Hara, 132 Mass. 56;
White v. Dunn, 134 Mass. 271;
Ayer v. Brown, 77 Main, 195.

It is respectfully contended by the plaintiff herein that while admitting the force of Section 4536 of the Revised Statutes, so far as preventing garnishment or attachment of seamen's wages, prior to judgment, yet that the statute in question does not pre-

vent the attachment of such wages under execution or otherwise after the entry of judgment against defendant.

Dated Honolulu, February 28, 1908.

Respectfully submitted,

CHARLES R. HEMENWAY,
Attorney General of Hawaii.

MASON F. PROSSER,
Attorneys for Appellant.

15

Office Supreme Court, U. S.
FILED.
MAR 26 1908
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1907.

NO. 30.

JAMES L. HOLT, Tax Assessor, and Collector of the First Taxation Division of the Territory of Hawaii,
Plaintiff in Error,

vs.

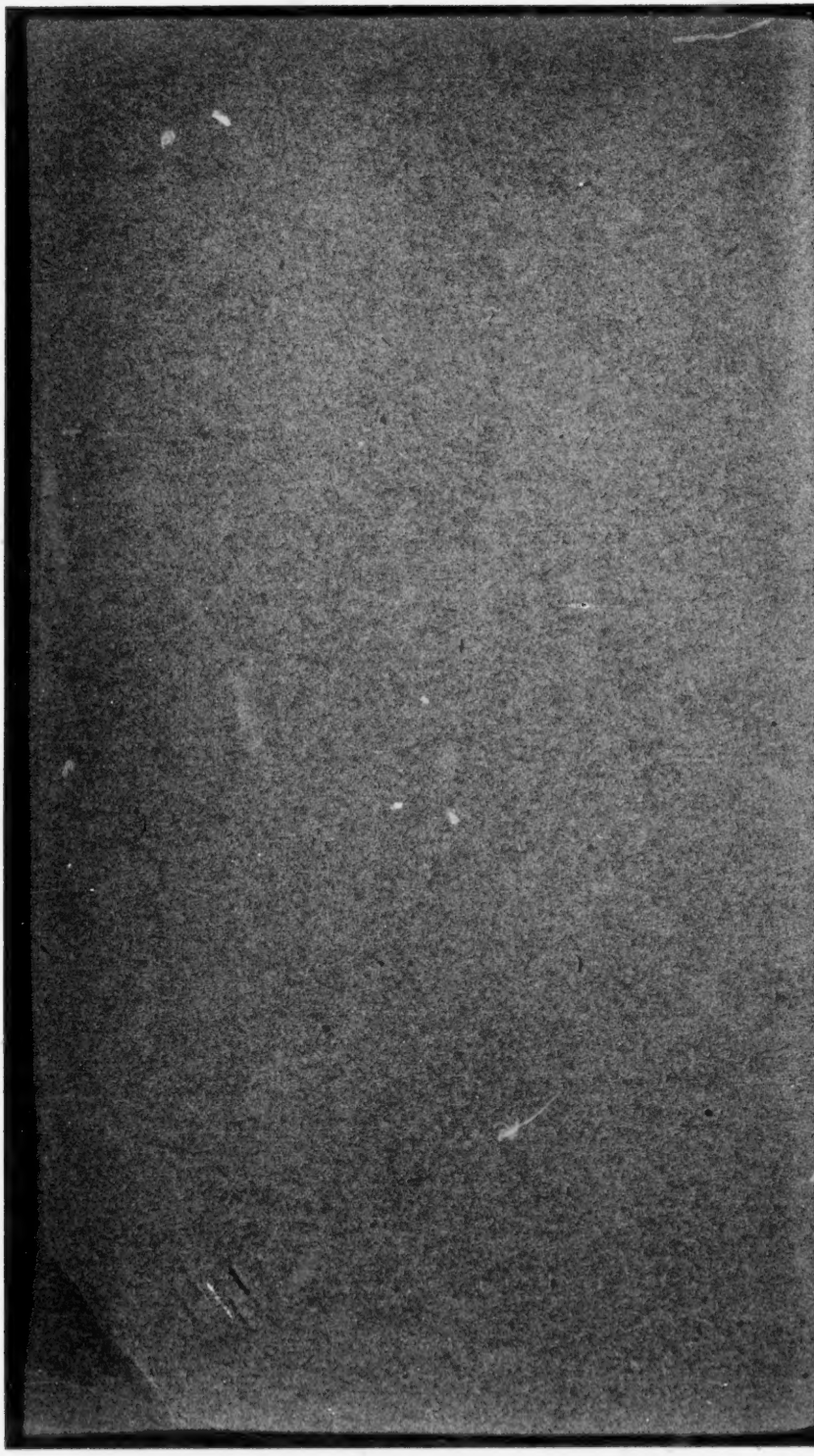
INTER-ISLAND STEAM NAVIGATION COMPANY, LTD.,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

MEMORANDUM ON BEHALF OF DEFENDANT IN ERROR.

A. LEWIS, JR.,
Attorney for Defendant in Error.

SMITH & LEWIS,
Of Counsel for Defendant in Error.



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1907.

NO. 244.

JAMES L. HOLT, Tax Assessor, and Collector of the First Taxation Division of the Territory of Hawaii,
Plaintiff in Error,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LTD.,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

MEMORANDUM OF BEHALF OF DEFENDANT IN ERROR.

The defendant in error, the Inter-Island Steam Navigation Company, Limited, an Hawaiian corporation, occupies a rather peculiar position in this proceeding. The Tax Assessor has garnisheed funds in its hands due as wages to A. Tullett, a captain of one of its vessels, which are engaged in inter-island trade.

The seaman claimed that his wages were exempt under Section 4536, R. S. U. S., and threatened unless the funds garnisheed were immediately paid over to him to institute suit in the United States District Court against the garnishee to recover the same under Sections 4530 to 4547, R. S. U. S., inclusive. The Tax Assessor contended that Section 4536 was not applicable; that this section applied to cases of mesne process such as an attachment prior to judgment, and not to process subsequent to judgment after the seaman had had his day in court and an opportunity to be heard.

The Federal Courts for the Ninth Circuit have all construed Section 4536 in favor of the contention of the Tax Assessor. *Telles v. Lyde*, 47 Fed. 942; *The Queen*, 93 Fed. 831, and *Simerson v. Inter-Is. S. N. Co., Ltd.*, 1 Dole 181 (U. S. D. C. for Hawaii).

The seaman nevertheless contended that this construction was contrary to the plain reading of the statute, and the contention of the seaman has been supported by a majority decision of the Supreme Court of the Territory of Hawaii in the present action, citing *McCarthy v. City of New Bedford*, 4 Fed. 818, and the *St. Louis*, 48 Fed. 312, the Chief Justice dissenting.

The garnishee stands ready and willing to pay over the funds in its hands to whomsoever the Court may finally decide is entitled to the same, and hopes and trusts that the Supreme Court of the United States will finally and once for all time bring to a conclusion this seemingly endless litigation.

This case now before this Honorable Supreme Court is only one of about forty cases all depending on the same state of facts. For the past six years the garnishee has been brought before the District Court of the Territory on many occasions, also before the United States District Court on several more occa-

sions, and has been so oscillating back and forth before the several courts, always with the fear of a double payment of the funds in question, that it will welcome the final determination by this Supreme Court of a vexed question involving sums small in amount but large in principle to the commonwealth and all the parties interested herein, and also what controlling effect, if any, should the construction of a Federal Statute by Federal Courts have upon the Territorial Courts within the Circuit of such Federal Court.

A. Lewis, Jr.,
Attorney for Defendant in Error.

Smith & Lewis,
Of Counsel for Defendant in Error.

Service by copy of the within Memorandum on behalf of the Defendant in Error is hereby admitted this ...13th... day of March, 1908.

.....C R Hemenway.....
Attorney General of the Territory of Hawaii,
Attorney for Plaintiff in Error.

Mr. Charles R. Hemenway, Attorney General of the Territory of Hawaii, and *Mr. Mason F. Prosser*, for plaintiff in error:

Sections 2117, 2121, Rev. Laws of Hawaii, though providing for garnishment, are in fact proceedings supplementary to execution as known in the various States of the Union.

Section 4536, Rev. Stat., does not exempt wages of seamen from execution or in proceedings supplementary thereto.

Seamen's wages by the act in question are exempt from arrestment or attachment, but not from execution. For definition of "arrestment"—a term used in Scotch law—see Bouvier, 169; Erskine, Inst. 3, 6, 1; 1, 2, 12. There is a clear distinction, however, between attachment and execution. *Thompson* v. *Baltimore*, 33 Maryland, 312; *Johnson* v. *Foran*, 58 Maryland, 148.

The above provision of the Revised Statutes does not apply to cases where judgment has been recovered against the defendant in a court of competent jurisdiction. It is only intended to prevent hasty judgment against defendants, who by reason of the fact that they are seamen and not properly versed in business methods, would be only too apt to allow claims against them to go by default. For the reason stated, in cases in the United States courts the strong arm and protection of the law is by this statute thrown around a class of persons notoriously improvident. But where such persons, even though they be seamen, and within the protection of § 4536, have been proceeded against according to law, and a valid claim against them has been adjudicated by a court of competent jurisdiction, the protection of the statute in question can no longer avail and prevent the collection of a just debt legally proven. *Telles* v. *Lynde*, 47 Fed. Rep. 912; *In re The Queen*, 93 Fed. Rep. 834, 835; *Eddy* v. *O'Hara*, 132 Massachusetts, 56; *White* v. *Dunn*, 134 Massachusetts, 271; *Ayer* v. *Brown*, 77 Maine, 195.

Mr. A. Lewis, Junior, for defendant in error.

Mr. Justice Day delivered the opinion of the court.

This case is one of a number of similar cases arising within

the Territory of Hawaii, and is brought here for the purpose of settling the liability of seamen's wages to seizure after judgment by attachment or proceedings in aid of execution. The Inter-Island Steam Navigation Company, defendant in error, was directed by order and judgment of the district magistrate of Honolulu to pay into court on account of a judgment rendered in favor of plaintiff in error against one A. Tullet the sum of $65.00. Tullet is a seaman, being master of the steamer *Keauhou*, plying between ports within the Territory. The sum of $65.00 was due to Tullet from the Inter-Island Steam Navigation Company for wages for the months of January and February, 1906. The judgment was recovered against Tullet on September 5, 1905, for the sum of $120.38 and costs. An execution was issued thereon and returned unsatisfied. Upon affidavit being filed an order was issued attaching the sum of $65.00, due in manner aforesaid from the navigation company to Tullet. The navigation company filed an answer setting forth that Tullet was an American seaman in the employ of the company, and that the money attached was due to Tullet as wages, and under § 4536 of the Revised Statutes of the United States the same were not subject to arrestment nor attachment, and that the territorial court had no jurisdiction in the premises. The lower court held that the wages could be attached in this manner. This judgment was reversed in the Supreme Court of Hawaii.

The laws of Hawaii regulating attachments in cases, such as are now under consideration, authorize proceedings supplementary to execution, as follows (chap. 135, Laws 1905):

"SEC. 2118. *Attachment of debts, order.*—It shall be lawful for a judge of any court upon the *ex parte* application of such judgment creditor either before or after such oral examination and upon affidavit by the judgment creditor or his attorney stating that judgment has been recovered and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor and is within the jurisdiction, to order that all debts owing or accruing from such third person

(hereinafter called the 'garnishee') to the judgment debtor, shall be attached to answer the judgment debt, and by the same or any subsequent order it may be ordered that the garnishee shall appear before the judge to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the judgment debt; provided that the judge may in his discretion, refuse to interfere when from the smallness of the amount to be recovered, or of the debt sought to be attached or otherwise, the remedy sought would be worthless or vexatious."

It was under this section of the Hawaiian statute that the order was made for the payment of the judgment out of the wages due to Tullet, and the question for decision in this case is: Can such an order be made consistently with the maritime law as declared in the Revised Statutes of the United States? The section of the statute construed in the Supreme Court of Hawaii is 4536, which provides:

"No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court; and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages, or of any attachment, incumbrance or arrestment thereon; and no assignment or sale of wages, or of salvage, made prior to the accruing thereof, shall bind the party making the same, except such advance securities as are authorized by this title."

This section was first enacted into the statutes of the United States in 1872, and was § 61 of the act of June 7, 1872, entitled "An Act to authorize the Appointment of Shipping-commissioners by the several Circuit Courts of the United States, to superintend the Shipping and Discharge of Seamen engaged in Merchant Ships belonging to the United States, and for the further Protection of Seamen." 17 Stat. 262, 276. It afterwards became, in the revision of 1874, § 4536, Rev. Stat. This section appears to have been copied from § 233 of the 17 and 18 Victoria, 1854, chap. 104, which act provides:

"No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court; and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of such wages, or of any attachment, incumbrance, or arrestment thereon; and no assignment or sale of such wages, or of salvage made prior to the accruing thereof, shall bind the party making the same, and no power of attorney or authority for the receipt of any such wages shall be irrevocable."

We have been unable to discover any English case construing this statute, and none has been called to our attention. In MacLachlan on Merchant Shipping (4th ed.), 231, that author states the effect of the statute to be to except seamen's wages from liability to attachment by a judgment creditor, as payment of such wages is valid, notwithstanding any previous sale or assignment thereof, or any attachment, incumbrance, or arrestment thereon. In this country the cases, state and Federal, in which this statute has been under consideration are not in accord. In *Telles* v. *Lynde*, 47 Fed. Rep. 912, and *The Queen*, 93 Fed. Rep. 834, the Circuit Court in the Ninth Circuit reached the conclusion that the statute did not prevent the seizure of seamen's wages after judgment upon proceedings in aid of execution, although the seamen's wages were not liable to attachment in advance of judgment.

The question was very fully considered by Judge Benedict in the case of *McCarty and another* v. *Steam Propeller City of New Bedford*, 4 Fed. Rep. 818. In that case Judge Benedict held the view that the statute of 17 and 18 Victoria, above cited, was but declaratory of the law of England as it theretofore existed, and that in view of the remedies given in the United States courts in admiralty, and the provisions of the Federal statutes enacted in reference to the recovery and protection of the wages of seamen, there was no jurisdiction in the state courts to garnishee the wages of seamen at the instance of a creditor.

With Judge Benedict's opinion before him, Mr. Justice Gray, then of the Supreme Judicial Court of Massachusetts, in the case of *Eddy* v. *O'Hara*, 132 Massachusetts, 56, said that the court, although recognizing the elaborate and forcible argument of Judge Benedict, had not been able to satisfy itself that such an exemption from attachment had ever been recognized, except as created or limited by express statutes or ordinances. The learned justice conceded that a determination of that question was not necessary to the decision then made, because the court held that the trustee in foreign attachment, having been compelled by process from the admiralty court to pay the amount of wages, could not be charged again for the same sum. In the subsequent case of *White* v. *Dunne*, 134 Massachusetts, 271, the question was directly presented, and the former opinion of Mr. Justice Gray, in 132 Massachusetts, 56, was approved; and it was held that the wages of seamen engaged in the coastwise trade (the act of June 9, 1874, c. 260, 18 Stat. 64, being construed to exempt coastwise trading vessels from the provisions of the act of 1872, which included what is now § 4536) are subject to attachment by the trustee process. The court expressed regret at its inability to agree with the Circuit Court of the United States for the Southern District of New York, evidently referring to Judge Benedict's opinion above cited, and expressed the opinion that no practical injustice would grow out of the conflict, as the Supreme Judicial Court of Massachusetts had recently held, in *Eddy* v. *O'Hara*, *supra*, that where the wages of seamen had been obliged to be paid by a decree in admiralty, a party could not again be charged under attachment proceedings, and the court expressed the opinion that, as the wages were paid upon the judgment upon which trustee process had issued a court of admiralty of the United States would not compel the owners to pay a second time.

In the case of *The City of New Bedford*, 20 Fed. Rep. 57, Judge Brown sitting in admiralty in the Southern District of New York, adhered to the views expressed by Judge Benedict

in *McCarty* v. *City of New Bedford*, *supra*, notwithstanding the decision in *Eddy* v. *O'Hara*, 132 Massachusetts, 56, *supra*, but held that a compulsory payment under garnishee process in Massachusetts, under principles of comity, should be recognized in the admiralty court. In *Ross* v. *Bourne*, 14 Fed. Rep. 858, Judge Nelson, sitting in the United States District Court in Massachusetts, held that a suit at law against a seaman, wherein his wages had been attached by a trustee process but not yet paid, would not bar the seaman's recovery of the whole wages by a suit in admiralty. Upon appeal to the Circuit Court of the same case (*Ross* v. *Bourne*, 17 Fed. Rep. 703), Judge Lowell said that "he did not dissent" from the learned opinion of Mr. Justice Gray, in *Eddy* v. *O'Hara*, *supra*, but held that such an attachment proceeding should be respected out of comity only, and that comity did not require actions in favor of seamen in admiralty to be hung up to await the dilatory proceedings of an attachment suit at common law.

From this conflict of views upon the subject we turn to the consideration of the section (4536) itself. We may premise that no contention was made in the Supreme Court of Hawaii, or in the assignments of error or argument in this court, that § 4536 was inapplicable because the steamship company was engaged wholly in the coastwise trade. This removes any question on that subject from the case and renders it unnecessary to decide whether the act of 1874, c. 259, 18 Stat. 64, had the effect to repeal § 4536, so far as vessels thus engaged are concerned. In the first clause of § 4536 it is provided that no wages due or accruing to any seamen shall be subject to attachment or arrestment from any court, and it is the contention of the plaintiff in error that the words "attachment" or "arrestment" only forbid such proceedings before judgment, but do not protect such wages from proceedings in attachment after judgment. Undoubtedly the word "attachment," as ordinarily understood in American law, has reference to a writ the object of which is to hold property to abide the order of the court for the payment of a judgment in the event

WILDER,[1] ASSESSOR, *v.* INTER-ISLAND STEAM NAVIGATION COMPANY, LIMITED.

ERROR TO THE SUPREME COURT OF THE TERRITORY OF HAWAII.

No. 30. Submitted October 22, 1908.—Decided November 30, 1908.

Section 4536, Rev. Stat., providing that seamen's wages shall not be subject to attachment or arrestment, is to be construed in the light of other provisions of the same title and is to be liberally interpreted with a view to protect the seamen; and, as so construed, that section prevents the seizure of wages not only by attachment before, but execution after, judgment, and such wages cannot be seized under § 2118 of the Laws of Hawaii.

Quære and not decided whether the act of June 9, 1874, c. 259, 18 Stat. 64, repealed § 4536, Rev. Stat., so far as vessels engaged in the coastwise trade are concerned.

17 Hawaii, 416, affirmed.

THE facts are stated in the opinion.

[1] Substituted for Holt, Assessor.

the debt shall be established. And as Mr. Justice Alvey says, in delivering the opinion of the Supreme Court of Maryland, *Thomson* v. *Baltimore and Susquehanna Steam Co.*, 33 Maryland, 312, 318:

"An attachment has but few of the attributes of an execution; the execution contemplated by the statute being the judicial process for obtaining the debt or damage recovered by judgment, and final in its character, while the attachment is but *mesne* process, liable at any time to be dissolved, and the judgment upon which may or may not affect the property seized."

"Arrestment," a word derived from the English statute, is a word of Scotch origin, and derived from the Scottish law, and thus defined by Bouvier:

"The order of a judge, by which he who is debtor in a movable obligation to the arrester's debtor is prohibited to make payment or delivery till the debt due to the arrester be paid or secured. Erskine, Inst. 3, 6, 1; 1, 2, 12. Where arrestment proceeds on a depending action it may be loosed by the common debtor's giving security to the arrester for his debt, in the event it shall be found due."

And in the Century Dictionary it is defined to be:

"A process by which a creditor may attach money or movable property which a third person holds for behoof of his debtor. It bears a general resemblance to foreign attachment by the custom of London."

Neither of the words used in the statute, "attachment" or "arrestment," considered literally, have reference to executions or proceedings in aid of execution to subject property to the payment of judgments, but refer, as we have seen, to the process of holding property to abide the judgment. But we are of opinion that this statute is not to be too narrowly construed, but rather to be liberally interpreted with a view to affecting the protection intended to be extended to a class of persons whose improvidence and prodigality have led to legislative provisions in their favor, and which has made them,

as Mr. Justice Story declared, "the wards of the admiralty." *Harden* v. *Gordon*, 2 Mason, 541.

We think too that the section is to be construed in the light of and in connection with the other provisions of the Title, of which it is a part. And we may notice that after providing against attachment or arrestment of wages, this very section goes on to enact that payment of wages to seamen shall be valid, notwithstanding any previous sale or assignment, or any attachment, incumbrance, or arrestment thereon; and that no assignment or sale of wages made prior to the accruing thereof shall bind the party making the same, except such advance securities as are authorized by this statute. When we look to the provisions of the Title we see that the field of "advanced securities" for which assignment is authorized is very narrow indeed. 3 United States Compiled Statutes, §§ 3079 *et seq.* It is made unlawful to pay any seaman his wages in advance, and an allotment of his wages is permitted only to grandparents, parents, wives, or children, or, under regulations of the Commissioner of Navigation, made with the approval of the Secretary of the Treasury, not to exceed one month's wages to a creditor in liquidation of a just debt for board or clothing. And it is provided that no allotment note shall be valid unless signed and approved by the shipping commissioner. This statute has been held a valid enactment (*Patterson* v. *Bark Eudora*, 190 U. S. 169) as to advancements.

Section 4536, therefore, has the effect of not only securing the wages of the seaman from direct attachment or arrestment, but further prevents the assignment or sale of his wages, except in the limited cases we have mentioned, and makes the payment of such wages valid notwithstanding any "attachment, incumbrance or arrestment thereon."

It seems to be clearly inferable from these provisions that wages which have thus been carefully conserved to the seaman were not intended to be subject to seizure by attachment, either before or after judgment.

Furthermore, there are other sections in the Title which

strongly support the conclusion that it was not intended that seamen's wages should be seized upon execution or attachment to collect judgments rendered at common law. Section 4535 provides that no seaman shall forfeit his lien upon the ship or be deprived of any remedy for the recovery of his wages by an agreement other than is provided for by this Title "Loss of lien." 3 U. S. Comp. Stat. § 3082. Section 4530 provides for the payment of seamen's wages, one-half at every port where such vessel shall load or deliver its cargo, and when the voyage is ended the remainder of his wages, as provided in § 4529. Section 4546 provides for the summons of the master when wages are unpaid within ten days to show cause why process should not issue against the vessel according to the rules of courts of admiralty. Section 4547 provides for process against a vessel in case a seaman's wages are not paid, or the master does not show that the same are otherwise "satisfied or forfeited," and all the seamen having like cause of complaint may be joined as complainants in a single action.

We think that these provisions, read in connection with § 4536, necessitate the conclusion that it was intended not only to prevent the seaman from disposing of his wages by assignments or otherwise, but to preclude the right to compel a forced assignment, by garnishee or other similar process, which would interfere with the remedy in admiralty for the recovery of his wages by condemnation of the ship. These provisions would be defeated if the seaman's wages, to be recovered at the end of the voyage, could be at once seized by an execution or attachment after judgment in an action at law. The evident purpose of the Federal statutes, that the seaman shall have his remedy in admiralty, would be defeated, and the seaman, in many cases, be turned ashore with nothing in his pocket, because of judgments seizing his wages, rendered, it may be, upon improvident contracts, from which it was the design and very purpose of the admiralty law to afford him protection.

"Ordinarily," says Judge Nelson, in *Ross* v. *Bourne*, 14

Fed. Rep. 862, *supra*, "the sailor's only means of subsistence on shore are his wages earned at sea. If these may be stopped by an attachment suit the instant his ship is moored to the wharf, a new hardship is added to a vocation already subject to its full share of the ills of life."

We think that § 4536, construed in the light of the other provisions of the same Title, prevents the seizure of the seaman's wages, not only by writs of attachment issued before judgment, but extends the like protection from proceedings in aid of execution, or writs of attachments, such as are authorized by the Hawaiian statutes, after judgment.

Finding no error in the decision of the Supreme Court of Hawaii, the same is

Affirmed.